



FACT SHEET

MSHA's Proposed Rule for Criteria and Procedures for Assessment of Civil Penalties



The Mine Safety and Health Administration (MSHA) is proposing to amend its civil penalty regulation to place a greater emphasis on more serious safety and health conditions, thus providing improved safety and health for miners. The proposed rule also would promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties, and facilitate the resolution of violations cited by MSHA inspectors.

MSHA's proposal is structured to encourage operators to be more accountable and proactive in addressing safety and health conditions at their mines, and is guided by the following principles:

- Simplify the penalty criteria used in writing citations and orders to reduce the number of decisions made by inspectors, promote consistency, objectivity and efficiency, and result in fewer areas of dispute and earlier resolution of enforcement issues
- Place greater emphasis on more serious health and safety conditions
- Be open and transparent in applying the regular formula penalty criteria

Projected Impact of Proposed Rule

MSHA analyzed the impact of the proposed rule by mine type and size using civil penalty data from 2013. Under the proposal, total penalties proposed by MSHA and the distribution of the penalty amount by mine size would remain generally the same; however, the proposed penalty amounts for small M/NM mines would decrease.

Background

In early 2010, MSHA Assistant Secretary Joseph Main [testified before Congress](#) about a growing backlog of contested civil penalty cases, citing a number of causes. One of the solutions he proposed to reduce the backlog was to make “the evaluation and writing of citations by inspectors simpler and ultimately more objective, clear and consistent.” In addition, in early 2011, President Obama [issued an Executive Order](#) requiring agencies to review and simplify their regulations. The proposed rule is responsive to those concerns.

Since 2010, MSHA has implemented special initiatives to encourage mine operators to find and fix conditions and practices that could lead to violations of safety or health standards, and the agency believes that its efforts have worked. The number of violations cited by MSHA has decreased, as has the backlog of contested cases. The proposed rule would improve the civil penalty process and reduce the number of citations and orders mine operators contest.

Proposed Changes to Penalty Criteria

The Federal Mine Safety and Health Act of 1977 established six criteria for determining civil penalties for violations of safety and health standards and regulations. The proposed rule would simplify those criteria and increase the relative weight of those criteria that reflect the seriousness of the operator's conduct: negligence, history of violations, and the severity aspect of gravity, as follows:

Operator's history of violations - Would increase the relative weight of violation history as a percentage of total penalty points, and revise the way violation history is determined to result in a more equitable impact of the Violations per Inspection Day formula on small metal/nonmetal mines.

Negligence of the operator - Would increase the relative weight of Negligence and reduce its five descriptive categories to three. Inspectors now choose from No Negligence, Low Negligence, Moderate Negligence, High Negligence, and Reckless Disregard. The new categories would be Not Negligent, Negligent, and Reckless Disregard.

Gravity of the violation – Would reduce the number of categories for the three aspects of Gravity - Likelihood of Occurrence, Severity of Injury or Illness, and Persons Affected - and increase the relative weight of Severity as a percentage of total penalty points.

Appropriateness of the penalty to the size of the business – Would reduce the relative weight of business size as a percentage of total penalty points.

Demonstrated good faith of the operator in attempting to achieve rapid compliance after notification of a violation – MSHA seeks comment on providing an additional 20% good faith penalty reduction when the operator does not contest a citation, promptly abates the condition or practice cited, and pays the civil penalty.

Effect of the penalty on the operator's ability to continue in business – Currently MSHA presumes that the operator's ability to continue in business would not be affected by the assessment of a civil penalty, although the operator may submit information concerning its financial status. This provision would remain the same.

Minimum and Maximum Penalty Amounts

The existing minimum penalty of \$112 and the maximum penalty of \$70,000 for non-flagrant violations would not change. However, minimum penalties for unwarrantable failure violations would increase to provide a greater deterrent for operators who allow these violations to occur.

Additional Question Posed in Preamble to Proposed Rule

MSHA seeks comment on three alternatives that would address the applicability of Part 100 when the Federal Mine Safety and Health Review Commission assesses civil penalties.